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APR

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,216	02/02/2001	James G. Morris	6829/60165 (800189-05)	1182
20350	7590	12/15/2004	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			CHISM, BILLY D	
		ART UNIT	PAPER NUMBER	
			1654	

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/776,216	MORRIS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	B. Dell Chism	1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 September 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 5-15,26,27,33 and 37-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 5-15,26,27,33,37-45 and 49-51 is/are rejected.
- 7) Claim(s) 46-48 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 13 September 2004 has been entered.

2. The pending claims are 5-15, 26-27, 33 and 37-51, and are under consideration.

### *Claim Objections*

3. Claims 46-48 are objected to because of the following informalities: claims 46-48 are dependent upon rejected claims. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 5-7, 33, 41-45 and 49-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5-7, 10-15 and 37-41 are rejected for the indefinite recitation of the terms "directly available" and/or "indirectly available", wherein the specification is unclear as to what constitutes directly and indirectly available. At page 3, lines 1-2, applicants refer to "pure" or "free" tyrosine, however, there is no mention as to the availability of the tyrosine. Again at page

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11, line 23, applicants use the word “free” in referring to “available” amino acids, however, there is no distinction as to whether free is directly or indirectly available.

Claims 6-7 are rejected for the indefinite recitation of the phrase “at least approximately”. The words “at least” set a minimum bar for which there can be no less, however, this definitive line is blurred when combined with “approximately” that connotes a range at the point. So, in the instant claims 6-7 there is uncertainty regarding whether there can be less than 0.05% or less than 0.10% and if there can be less then the phrase “at least” is insufficient in defining the range and if it cannot be less then the word “approximately” allows for a broader range than is intended by the claim.

Claims 33, 41-45 and 49-51 are rejected for the indefinite recitation of the term “bioavailable”. At pages 12-13, applicants define bioavailable tyrosine to be that which is digested for the purpose of perpetuating melanin production for hair color restoration and bioavailable for those biological pathways that do perpetuate such activity. However, on page 13, applicants also state that the bioavailable tyrosine may also be used in other aspects of the animal’s biology such as healing. Thus, it is clear what is meant by bioavailable.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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7. Claims 5-15, 26-27 and 37-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Sergheraert *et al.* (US Patent 6,641,835). Sergheraert *et al.* teach the method of treating fur or hair pigmentation of domestic carnivores, e.g., cats and dogs, wherein there is at least a 5% free tyrosine supplied in an animal food composition. It should be noted that the Sergheraert *et al.* reference was filed 01 November 2000, which is a later filing date than that of the instant application; however, the instant application is a Continuation in Part of the now abandoned Patent application serial number 09/501,548 ('548). It should be noted that the instant application gets priority to '548 for any animal consumable product comprising less than or equal to 0.2% down to 0.05% of free tyrosine. The '548 specification does not afford support enough to demonstrate any amount over the 0.2% stated at page 7 of that specification. Therefore, any of the instant claims are anticipated that are if drawn to ranges of amounts comprising 5% free tyrosine or more, by Sergheraert *et al.*

*Conclusion*

8. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to B. Dell Chism, whose telephone number is (571) 272-0962. The examiner can normally be reached on M-F 08:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, PhD can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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B. Dell Chism  
**PATENT EXAMINER**